

This letter responds to a survey regarding utility taxes, fuels and telecommunication taxes. See 86 Ill. Adm. Code 470.110. (This is a GIL).

August 18, 2004

Dear Xxxxx:

This letter is in response to your letter dated March 8, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are a professional engineering firm engaged in utility consulting. Our firm works with a variety of industrial and residential housing clients across the country. We working business owners to ensure that they are paying the **correct taxes** on their utility usage.

Please clarify the status of sales/use taxes for the following classes of utility service:

		Exempt				Contact	Remark
		Industrial	Residential				
		Yes	No	Yes	No		
Electricity	?	?	?	?			
Water	?	?	?	?			
Natural gas	?	?	?	?			
Other fuel (including heating oil	?	?	?	?			
Sewer and refuse, industrial		?	?	?	?		
Intrastate telephone and telegraph		?	?	?	?		
Interstate telephone and telegraph		?	?	?	?		
Cellular telephone services		?	?	?	?		

Also, please send us copies of the statutes governing taxes on the above utilities and any regulations or examples that may be available and the name and telephone number of the person we can call if we have questions.

We really appreciate your help in this matter and look forward to receiving the information. If you have any questions or comments, please feel free to call me.

## **DEPARTMENT'S RESPONSE:**

Although we are unable to respond in the format requested, we hope the following general information will be useful in making a determination on the appropriate tax liability for your business owners.

### **Electricity**

Section 2-4 of the Electricity Excise Tax Law (35 ILCS 640/2-4) provides that the Electricity Excise Tax is imposed "on the privilege of using in this State electricity purchased for use or consumption and not for resale, other than by municipal corporations owning and operating a local transportation system for public use . . . ." The incidence of this tax is on the consumers of electricity.

Except for customers that elect to become self-assessing purchasers, the tax is collected from the customers by their delivering suppliers who maintain a place of business in this State. See 35 ILCS 640/2-7. The term "delivering supplier" is defined as "any person engaged in the business of delivering electricity to persons for use or consumption and not for resale and who, in any case where more than one person participates in the delivery of electricity to a specific purchaser, is the last of the suppliers engaged in delivering the electricity prior to its receipt by the purchaser." See 35 ILCS 640/2-3.

Other taxes and charges affecting electricity may apply. See for examples, Energy Assistance Charges, 305 ILCS 20/13(b); Electric Distribution and Investment Capital Taxes, 35 ILCS 620/2a.1; and Municipal Electricity Taxes, 65 ILCS 5/11-8-2.

### **Water**

Please see the Water Company Invested Capital Tax Act (35 ILCS 625/1) to see if it affects your clients.

### **Natural Gas and Heating Oil**

The Gas Revenue Tax Act imposes upon persons engaged in the business of distributing, supplying, furnishing or selling gas to persons for use or consumption and not for resale, a tax at the rate of 2.4 cents per therm of all gas which is so distributed, supplied, furnished or sold or transported to or for each customer in the course of such business, or 5% of the gross receipts received from each customer from such business, whichever is the lower rate as applied to each customer for that customer's billing period. However, such taxes are not imposed with respect to any business in interstate commerce, or otherwise to the extent to which such business may not, under the Constitution and Statutes of the United States, be made the subject of taxation by this State. See 86 Ill. Adm. Code 470.110(a).

Under the Gas Use Tax Law, Gas Use Tax is imposed on the privilege of using in Illinois gas obtained in a purchase of out-of-state gas. A "purchase of out-of-state gas" is specifically defined to mean a transaction for the purchase of gas from any supplier in a manner that does not subject the

seller of that gas to liability under the Gas Revenue Tax Act. See 35 ILCS 175/5-1 et seq. Section 5-50 of the Gas Use Tax Law lists the only uses of gas that are not subject to Gas Use Tax liability. The Department's proposed rules for the Gas Use Tax Law have been filed and may now be viewed on the Department's Internet website referenced below. See 86 Ill. Adm. Code 471.101 et seq.

Sales of heating oil in Illinois are subject to sales tax. Energy Assistance Charges may also apply to certain natural gas customers. See 305 ILCS 20/13(b).

### **Sewer and Refuse**

The State does not tax sewer or refuse services.

### **Telephone Services**

The Illinois Telecommunications Excise Tax Act imposes a tax on the act or privilege of originating or receiving intrastate or interstate telecommunications by persons in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers by such persons. See 35 ILCS 630/3 and 35 ILCS 630/4. The tax imposed thereunder shall be collected from the taxpayer by a retailer maintaining a place of business in this State and remitted to the Department. See 35 ILCS 630/5. The tax is imposed on wireline and wireless (cellular telephone service etc.) telecommunications.

Beginning January 1, 2003, the Department began administering local telecommunications taxes (other than for the City of Chicago) under the Simplified Municipal Telecommunications Tax Act. See 35 ILCS 636/5-1 et seq. The Simplified Municipal Telecommunications Tax Act allows municipalities to impose simplified municipal telecommunications taxes on the same tax base as the State Telecommunications Excise Tax.

The only exclusions from these taxes are listed in the definition of a "sale at retail" in Section 2 of the Telecommunications Excise Tax Act, 35 ILCS 630/2 and Section 5-7 of the Simplified Municipal Telecommunications Tax Act, 35 ILCS 636/5-7.

The State also imposes State Telecommunications Infrastructure Maintenance Fees. See 35 ILCS 635/15. Please note that these fees are not imposed on wireless telecommunications.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel

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